

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JESSAMINE JUNIO SARTE
a.k.a. JESSAMINE A. JUNIO
1585 N. Fair Oaks Ave, Unit 102-C
Pasadena, CA 91103

Registered Nurse License No. 727289

Respondent.

Case No. 2013-6

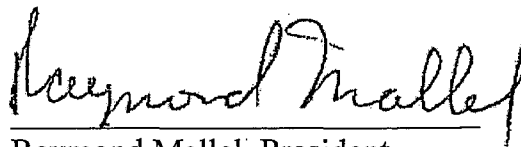
OAH No. 2012080662

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on May 3, 2013.

IT IS SO ORDERED this 3rd day of April, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Against:

JESSAMINE JUNIO SARTE,
aka JESSAMINE A. JUNIO,

Registered Nurse License No. 727289,

Respondent.

Case No. 2013-6

OAH No. 2012080662

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on December 11, 2012, in Santa Ana. Complainant was represented by Linda L. Sun, Deputy Attorney General. Respondent Jessamine Junio Sarte was present and represented herself.

Documentary and oral evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on July 2, 2012, Accusation, Case No. 2013-6, was made and filed by complainant Louise R. Bailey, M.Ed., R.N., in her official capacity as Interim Executive Director, Board of Registered Nursing, Department of Consumer Affairs, State of California (Board).
2. On or about June 2, 2008, the Board issued registered nurse license no. 727289 and licensing rights to Jessamine Junio Sarte, also known as Jessamine A. Junio (respondent). At all times relevant herein, said registered nurse license was in full force and effect.

3. Respondent's registered nurse license expired on December 21, 2011. The Board has continuing jurisdiction to seek disciplinary action against the license under Business and Professions Code section 2764. Respondent has no prior disciplinary history on her nursing license.

4. Respondent was born and raised in the metropolitan area of Manila in the Philippines. In April 1998, she attained a bachelor of science degree in nursing from Manila Central University. In March 2002, respondent, her husband, and oldest child came to California. In 2003, she obtained licensure as a licensed vocational nurse. Her husband became a registered nurse. In April 2008, respondent obtained her registered nurse license. In 2010, she obtained employment as a registered nurse at Marguerite Gardens, a skilled nursing facility in Alhambra. On the weekends, respondent performed the duties of the interim director of nursing as well as a charge nurse at the skilled nursing facility.

5. (A) On or about May 17, 2012, before the Superior Court of California, County of Los Angeles, in *People v. Jessamine J. Sarte*, Case No. GA084201, respondent was convicted on her plea of nolo contendere of possession of a controlled substance for sale in violation of Health and Safety Code, section 11351, a felony and crime involving moral turpitude. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered nurse.

(B) Based on her plea and its review of the pre-conviction probation report, the court suspended the imposition of sentence and placed respondent on formal probation for three years on condition, in part, that she serve 60 days in the Los Angeles County Jail, pay fines and fees totaling approximately \$270, obey all laws and orders of the court, obey all rules and regulations of the probation department, cooperate with the probation officer in a plan for psychological counseling in lieu of drug counseling, seek and maintain employment, submit to search and seizure without a warrant or probable cause, register as a convicted narcotics offender, and not use or possess any narcotics or drugs or associated paraphernalia,

6. The facts and circumstances of respondent's conviction are that, on or about February 19, 2011, she unlawfully possessed for sale the controlled substance Vicodin or Hydrocodone while working as a registered nurse at Marguerite Gardens. Specifically, on or about February 19, 2011, while she was smoking outside the nursing facility, respondent was approached by another employee. The co-worker stated she was in pain and asked respondent if she could sell her tablets of Vicodin. The next day, respondent took 40 tablets of Vicodin from a secured medication cart and sold the 40 tablets of the controlled substance to the other employee for \$40. On February 20, 2011, the director of nursing noticed that the 40 tablets of Vicodin were missing from the medication cart and that respondent was the last registered nurse to have signed the medication administration record. The director of nursing asked respondent for an explanation for the missing Vicodin tablets. When respondent could not provide an explanation, the director of nursing suspended her from her employment. On February 24, 2011, the director of nursing summoned respondent to a meeting. On arrival to the meeting, respondent submitted a letter of resignation and a letter

admitting that she took and sold the Vicodin. Respondent explained that she took and sold the controlled substance tablets because she was short of money due to child support obligations.

7. After she was convicted and while serving her jail sentence, respondent came to the attention of U.S. Immigration and Customs Enforcement and was determined to be subject to deportation. On September 12, 2012, before the U.S. Immigration Court, respondent was ordered removed from this country. Her applications for asylum and withholding and/or deferral of removal were denied. On the date of the hearing in this matter, respondent was being detained by U.S. Immigration and Customs Enforcement at the Santa Ana City Jail.

8. (A) Respondent did not present any witnesses or documentary evidence that attested to her character, work history, or knowledge and skills as a registered nurse. She testified in her own defense, but she did not admit her crime or demonstrate remorse for her conduct. Rather, respondent denied that she committed the offense of possession of a controlled substance for sale. She testified that she did not steal the Vicodin from the medication cart or sell the controlled substance to the other employee and that there was no proof or film of the theft or diversion of the drugs. She stated she was pressured by the director of nursing to admit to the theft and sale of Vicodin and to resign from her job. Respondent speculated the director of nursing had a personal relationship with the Board's investigator and complained that she received bad advice from the deputy public defender, who represented her in the criminal proceeding, before she pleaded nolo contendere to her offense. She claimed she is appealing her criminal conviction as well as the removal order.

(B) On August 16, 2011, respondent was interviewed by a senior investigator of the Division of Investigation, Department of Consumer Affairs. Respondent confirmed that she wrote the February 24, 2011 letter in which she admitted taking and selling the Vicodin. She explained that, in February 2011, she had recently divorced and was required to pay \$2,400 each month in child support for her three children. In addition, her vehicle had broken down and needed repair work. She admitted to the senior investigator that she was in financial difficulty and took the Vicodin and sold it to another employee of the nursing facility to make some money. Respondent did not mention that she was pressured or coerced to admit her misconduct to the director of nursing at the facility.

(C) Based on Findings 5(A), 6, and 8(B) above, respondent's denials of her guilt and her claims of innocence were not credible. She has a motive not to be candid and truthful inasmuch as she is facing deportation for having been convicted of a felony drug charge and is seeking to stay in this country.

9. (A) On or about November 23, 2009, while employed as a registered nurse at the Thousand Oaks Health Care Center, respondent took a cellular telephone belonging to a patient who was afflicted with dementia. She then used the patient's telephone to make personal calls.

(B) On November 23, 2009, respondent was working the night shift at the Thousand Oaks Health Care Center when she received a call from her husband that she needed to come and watch one of their children who was sick. She then accidentally dropped her cellular telephone in the toilet, rendering it inoperative. She took the patient's telephone, used it to make personal calls, and left the facility with the patient's telephone. Respondent did not return the telephone to the patient until the next day when she heard that the director of nursing at the facility was looking for the patient's telephone. The patient's wife had complained about the missing telephone. The facility had a policy that nurses were not allowed to use or take personal property belonging to patients.

10. During her interview with the senior investigator on August 16, 2011, respondent admitted that she took and used the patient's telephone. She admitted her misconduct on that occasion during the hearing in this matter as well.

11. Respondent is 34 years and divorced. Her three children are living with their grandmother in San Diego.

12. The Board's costs of investigation and enforcement in this matter were \$10,570, as set forth in the Certification of Investigation Costs, Declaration of Investigative Costs, and Certification of Prosecution Costs (Exh. 3).

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code sections 2761, subdivision (f), and 490, for conviction of a crime substantially related to the qualifications, functions, or duties of a registered nurse, as set forth in Findings 5 – 6 above. The record of conviction is conclusive evidence that respondent was convicted of an offense.

Respondent's conviction for unlawful possession of a controlled substance for sale is substantially related to the qualifications, functions, or duties of a registered nurse because the conviction and its circumstances demonstrate to a substantial degree that she is presently or potentially unfit to practice as a registered nurse in a manner consistent with the public health, safety, or welfare within the meaning of California Code of Regulations, title 16, section 1444, subdivision (c). She took 40 tablets of Vicodin from her place of nursing employment and sold the controlled substance to another employee to make extra money. Her conviction and crime involved dishonesty, fraud, or deceit. Honesty and integrity are qualities expected of a registered nurse.

2. Grounds exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c), in that respondent was convicted of a criminal offense involving the possession for sale of a controlled substance, Vicodin, based on Findings 5 – 6 above. The record of conviction is conclusive evidence that respondent was convicted of this offense.

3. Grounds exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (a), in that respondent obtained and possessed for sale the controlled substance Vicodin, in violation of law, based on Conclusions of Law 1 and 2 and Findings 5 – 6 above.

4. Grounds exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code sections 2761, subdivision (a), in that respondent took a cellular telephone belonging to a patient in violation of hospital policy, as set forth on Findings 9 - 10 above. Respondent's conduct reflected on her fitness to practice nursing in a manner consistent with the public health, safety, or welfare and was therefore substantially related to the qualifications, functions, or duties of a registered nurse within the meaning of California Code of Regulations, title 16, section 1444.

5. Grounds exist to order respondent to pay the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, for having violated the Nursing Practice Act, based on Conclusions of Law 1 – 4 and Finding 12 above. The reasonable costs of investigation and enforcement are deemed to be \$10,570. The costs of prosecution are not excessive or unreasonable, but respondent has continuing obligations to provide child support to her children or ex-husband and will likely not have the ability or the means to earn an income once her registered nurse license is revoked pursuant to this Decision and she is deported from this country. Based on her outstanding financial obligations and lack of financial means, respondent will not be directed to pay the Board's costs at this time.

6. Discussion – Complainant proved by clear and convincing evidence to a reasonable certainty that respondent was guilty of unprofessional conduct for taking Vicodin from her nursing place of employment and selling the controlled substance, for having been convicted of the felony possession for sale of a controlled substance, and for taking a patient's cellular telephone without the patient's consent and in violation of hospital policy. Her criminal conduct is recent in that it occurred in February 2011. In addition, respondent did not present any evidence of her rehabilitation from her conviction and conduct under the

criteria of California Code of Regulations, title 16, section 1445. In fact, she denied her conviction and criminal conduct demonstrating that she is not rehabilitated. Public health, safety, and welfare require the revocation of her registered nurse license.¹

* * * * *

Wherefore, the following Order is hereby made:

ORDER

1. Registered nurse license no. 727289 and licensing rights previously issued by the Board of Registered Nursing to respondent Jessamine Junio Sarte, also known as Jessamine A. Junio, are revoked, based on Conclusions of Laws 1 – 4 and 6, jointly and for all. Accusation, Case No. 2013-6, is sustained.

2. Moreover, respondent Jessamine Junio Sarte, also known as Jessamine A. Junio, will not be ordered to pay the reasonable costs of investigation and prosecution at this time, based on Conclusions of Law 5 above. The Board of Registered Nursing may require the payment of the reasonable costs of investigation and prosecution as a condition for reinstatement of respondent's nursing license, if applicable.

Dated: January 30, 2013



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

¹ Under its Recommended Guidelines, the Board of Registered Nursing recommends the revocation of the nursing license when a licensee is convicted of felony or any offense substantially related to the qualifications, functions, or duties of a registered nurse, including the offense of the sale and use of controlled substances.

Exhibit A

Accusation Case No. 2013-6

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Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2013-6

11 **JESSAMINE JUNIO SARTE, AKA**
12 **JESSAMINE A. JUNIO**
13 **1585 N. Fairoaks Ave, Unit 102-C**
Pasadena, CA 91103
14 **Registered Nurse License No. 727289**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
20 Department of Consumer Affairs.

21 2. On or about June 2, 2008, the Board issued Registered Nurse License Number
22 727289 to Jessamine Junio Sarte, aka Jessamine A. Junio (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and has
24 expired on December 21, 2011.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
2 defined in Section 4022.

3

4 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof."

9 REGULATORY PROVISIONS

10 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

11 AA conviction or act shall be considered to be substantially related to the qualifications,
12 functions or duties of a registered nurse if to a substantial degree it evidences the present or
13 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
14 safety, or welfare.@

15 COSTS RECOVERY PROVISION

16 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 DRUG DEFINITION

21 11. **Vicodin** – trade name for the narcotic substance Hydrocodone or Dihydrocodeine
22 with the non-narcotic substance acetaminophen. It is classified as a Schedule III controlled
23 substance pursuant to Health and Safety Code section 11056 and a dangerous drug pursuant to
24 Business and Professions Code section 4022.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under Code sections 2761, subdivision (f)
4 and 490, in conjunction with California Code of Regulations, title 16, section 1444, in that
5 Respondent was convicted of a crime substantially related to the qualifications, functions or
6 duties of a registered nurse. The circumstances are as follows:

7 a. On or about May 17, 2012, pursuant to her nolo contendere plea, Respondent was
8 convicted of one felony count of violating Health and Safety Code section 11351 [unlawful
9 possession of controlled substance for sale] in the criminal proceeding entitled *The People of the*
10 *State of California v. Jessamine J. Sarte* (Super. Ct. Los Angeles County, 2011, No. GA084201).
11 The Court sentenced Respondent to 60 days in Los Angeles County Jail and placed her on 3 years
12 of formal probation, with terms and conditions.

13 b. The circumstances surrounding the conviction are that in or about February 2011,
14 while working as a registered nurse at Marguerite Gardens, a skilled nursing facility in Alhambra,
15 Respondent stole about 40 Vicodin 5/500mg tablets intended for the residents from the facility
16 and sold them to another facility employee for profit.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unlawful Possession of Controlled Substance)**

19 13. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
20 as defined under Code section 2762, subdivision (c) on the grounds of unprofessional conduct, in
21 that in or about February 2011, Respondent obtained or possessed in violation of law, or
22 prescribed, or furnished to another, Vicodin, a controlled substance. Complainant refers to and
23 incorporates all the allegations contained in paragraph 12, as though set forth fully.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Conviction Related to Controlled Substance)**

26 14. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
27 as defined under Code section 2762, subdivision (a) on the grounds of unprofessional conduct, in
28 that in or about February 2011, Respondent was convicted of a felony involving the unlawful

possession of Vicodin, a controlled substance, for sale. Complainant refers to and incorporates all the allegations contained in paragraph 12, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), in conjunction with California Code of Regulations, title 16, section 1444, on the grounds of unprofessional conduct, in that on or about November 23, 2009, while working as a registered nurse at the Thousand Oaks Health Care Center, Respondent took the cell phone from a patient who was suffering from dementia and used it to make calls without authorization. Respondent removed the cell phone out of the facility and returned it to the patient's room the next day when she learned that the facility was investigating the missing cell phone.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 727289, issued to Jessamine Junio Sarte, aka Jessamine A. Junio;

2. Ordering Jessamine Junio Sarte to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: July 2, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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